

FILED

JUL 14 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UMG RECORDINGS, INC. et al.,

Plaintiffs,

No. C 04-1351 MHP

v.

**MEMORANDUM & ORDER RE:
Defendants' Motion to Dismiss**

BERTELSMANN AG et al.,

Defendants.

_____ /

LIEBER et al.,

Plaintiffs,

No. C 04-1671 MHP

v.

BERTELSMANN AG et al.,

Defendants.

_____ /

CAPITOL RECORDS, INC. et al.,

Plaintiffs,

No. C 04-2121 MHP

v.

BERTELSMANN AG et al.,

Defendants.

_____ /

1 UMG RECORDINGS, INC. et al.,

2 Plaintiffs,

No. C 04-1166 MHP

3 v.

4 HUMMER WINBLAD VENTURE
5 PARTNERS et al.,

6 Defendants.

7 _____ /
8 BRIDGEPORT MUSIC, INC. et al.,

9 Plaintiff Applicants in Intervention
10 _____ /

11 These actions arise from the litigation involving alleged copyright infringement by Napster,
12 Inc. ("Napster") before this court and the Ninth Circuit in 2000 and 2001. Plaintiffs UMG
13 Recordings, Inc. et al. ("UMG"), Capitol Records, Inc. et al. ("Capitol"), and Jerry Lieber et al.
14 ("Lieber") have brought suit against Bertelsmann AG et al. ("Bertelsmann") and Hummer Winblad
15 Venture Partners et al. ("Hummer"),¹ alleging that Bertelsmann and Hummer engaged in vicarious
16 and contributory copyright infringement in the course of their involvement with Napster. Now
17 before the court are defendants' motions to dismiss for failure to state a claim upon which relief may
18 be granted, and applicant Bridgeport Music, Inc.'s ("Bridgeport's") motion to intervene. Having
19 considered the parties' arguments and submissions, and for the reasons set forth below, the court
20 now enters the following memorandum and order.
21

22 BACKGROUND²

23 The facts and events surrounding the operation of Napster and giving rise to this action have
24 already been ably summarized both by this court and the Ninth Circuit. See A & M Records, Inc. v.
25 Napster, Inc., 114 F. Supp. 2d 896 (N.D.C.A. 2000) (Patel, C.J.) (aff'd in part, rev'd in part, and
26 remanded, 239 F.3d 1004 (9th Cir. 2001) (hereinafter "Napster II"). In its April 2001 opinion
27 evaluating plaintiffs' motion for a preliminary injunction, the Ninth Circuit held that plaintiffs in that
28

1 case had demonstrated a substantial likelihood of success on the merits of their claim that
2 Napster—through its file-sharing system that facilitated the exchange of copyrighted works among
3 online users—had engaged in contributory and vicarious infringement. See Napster II, 239 F.3d at
4 1022 & 1024. Napster, Inc. has since entered bankruptcy protection, and plaintiffs in this case have
5 now filed suit against Bertelsmann and Hummer Winblad in an effort to hold those parties
6 responsible for Napster's actions (indeed, for the very existence of Napster) and to recoup some of
7 their damages allegedly occasioned by the formidable amount of file-sharing that took place under
8 Napster's auspices.

9 The above-captioned lawsuits naming Bertelsmann as a defendant were originally filed in the
10 Southern District of New York, and UMG brought its lawsuit against Hummer Winblad in the
11 Central District of California in the first instance. These cases were then transferred to this court by
12 the Judicial Panel on Multidistrict Litigation by reason of this court's involvement in the underlying
13 Napster litigation. Defendants have filed motions to dismiss under Fed. R. Civ. P. 12(b)(6) against
14 all plaintiffs' claims, and briefing on these motions has been somewhat consolidated due to the inter-
15 relatedness of the issues presented. The court further consolidates these separate motions and
16 decides them here.

17 In 2003, Bridgeport filed a motion to intervene in UMG's action against Bertelsmann while
18 that case was still pending in the Southern District of New York. Plaintiff UMG opposed
19 Bridgeport's motion on the ground that intervention would prejudice UMG's rights in that action, as
20 Bridgeport and UMG were themselves at loggerheads over a number of issues, not least of which
21 was the question of whether Bridgeport owned partial rights to numerous UMG works whose
22 copyrights Bertelsmann had allegedly infringed. On December 1, 2003, the Southern District of
23 New York denied Bridgeport's motion to intervene, see UMG Recordings, Inc. v. Bertelsmann AG,
24 2003 WL 22852745 (S.D.N.Y. 2003), stating that Bridgeport would be entitled to file a separate
25 action against Bertelsmann if it so chose. That separate action has since been filed and is now
26 consolidated before this court. See Bridgeport Music, Inc. v. Bertelsmann AG, C-04-2149 MHP.³
27 Meanwhile, on September 18, 2003, Bridgeport filed a motion to intervene in UMG's separate action
28

1 against Hummer Winblad—which at that point still resided in the Central District of
2 California—alleging, in similar fashion to UMG, that Hummer is liable for the vicarious and
3 contributory acts of infringement perpetrated by Napster. Bridgeport pursues that motion here, and
4 is opposed in its efforts to intervene not only by UMG, but also by Hummer Winblad, the defendant.

5
6 LEGAL STANDARD

7 I. Motion to Dismiss

8 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal
9 sufficiency of a claim.” Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Because Rule
10 12(b)(6) focuses on the “sufficiency” of a claim—and not the claim’s substantive merits—“a court
11 may [typically] look only at the face of the complaint to decide a motion to dismiss.” Van Buskirk v.
12 Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002). If “a district court considers evidence
13 outside the pleadings” when deciding a Rule 12(b)(6) motion, the court “must normally convert the
14 12(b)(6) motion into a [Federal Rule of Civil Procedure] 56 motion for summary judgment, and it
15 must give the nonmoving party an opportunity to respond.” United States v. Ritchie, 342 F.3d 903,
16 907 (9th Cir. 2003).

17 Under Rule 12(b)(6), “unless it appears beyond doubt that plaintiff can prove no set of facts
18 in support of her claim which would entitle her to relief,” a motion to dismiss must be denied. Lewis
19 v. Telephone Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996) (citation omitted); see
20 also Conley v. Gibson, 355 U.S. 41, 45–46 (1957) (permitting dismissal for failure to state a claim
21 only where “it appears beyond doubt that the plaintiff can prove no set of facts in support of his
22 claim which would entitle him to relief”). When assessing a Rule 12(b)(6) motion, the court must
23 accept as true “all material allegations of the complaint,” and all reasonable inferences must be
24 drawn in favor of the non-moving party. See, e.g., Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
25 337–38 (9th Cir. 1996) (citation omitted). Dismissal is proper under Rule 12(b)(6) “only where
26 there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable
27 legal theory.” Navarro, 250 F.3d at 732 (citing Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699
28 (9th Cir. 1988)). The court need not, however, accept as true conclusory allegations, unwarranted

1 deductions of fact, or unreasonable inferences. Sprewell v. Golden State Warriors, 266 F.3d 979, 988
2 (9th Cir. 2001).

3
4 II. Vicarious and Contributory Infringement

5 Although the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, does not expressly impose liability on
6 anyone other than direct infringers, courts have long recognized that in certain circumstances,
7 vicarious or contributory liability will be imposed. See, e.g., Fonovisa, Inc. v. Cherry Auction, Inc.,
8 76 F.3d 259, 261 (9th Cir.1996). Contributory infringement imposes liability where one person
9 knowingly contributes to the infringing conduct of another. Id. at 264. Liability under this theory
10 requires substantial participation in a specific act of direct infringement. See Gershwin Publ'g Corp.
11 v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1162 (2d Cir.1971). Thus, a prima facie case of
12 contributory infringement is presented where plaintiffs allege (1) direct infringement by a third party;
13 (2) knowledge by the defendant that third parties were directly infringing; and (3) substantial
14 participation by the defendant in the infringing activities. See Napster II, 239 F.3d at 1013 n.2, 1019.
15 Courts do not require actual knowledge; rather, a defendant incurs contributory copyright liability if
16 he has reason to know of the third party's direct infringement. See Cable/Home Communication
17 Corp. v. Network Productions, Inc., 902 F.2d 829, 846 (11th Cir. 1990); Sega Enter. Ltd. v.
18 MAPHIA, 948 F. Supp. 923, 933 (N.D.C.A. 1996) (Wilken, J.).

19 Even in the absence of an employment relationship, a defendant incurs liability for vicarious
20 copyright infringement if he “has the right and ability to supervise the infringing activity and also has
21 a direct financial interest in such activities.” Fonovisa, 76 F.3d at 262 (quoting Gershwin, 443 F.2d
22 at 1162).

23
24 II. Intervention

25 Federal Rule of Civil Procedure Rule 24 has long been “liberal[ly] constru[ed] in favor of
26 applicants for intervention.” Arakaki v. Cayetano, 324 F.3d 1078, 1082–83 (9th Cir. 2003) (citing
27 Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998)); see also Haworth, Inc. v. Steelcase, Inc.,
28

1 12 F.3d 1090, 1094 (Fed. Cir. 1993). Under Rule 24(a), a party retains *the right* to intervene if: (1)
2 the applicant has made a timely motion to intervene; (2) the applicant has a significant protectable
3 interest relating to the property or transaction that is the subject of the action; (3) the applicant is
4 situated such that the disposition of the action may impair or impede the applicant's ability to protect
5 that interest; *and* (4) the applicant's interest is not adequately represented by existing parties. See
6 Fed. R. Civ. P. 24(a)(2); Arakaki, 324 F.3d at 1082–83; see also Haworth, Inc. v. Steelcase, Inc., 12
7 F.3d 1090, 1094 (Fed. Cir. 1993) (noting, generally, that procedural matters like intervention are
8 governed by the law of the circuit of residence). Rule 24(a)'s test is conjunctive; to merit
9 intervention as of right, a prospective intervenor must satisfy each Rule 24(a) requirement. See
10 League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997).

11 Unlike Rule 24(a), Rule 24(b) does not require the potential intervenor to demonstrate a
12 “significant protectable interest.” See Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1107–08
13 (9th Cir. 2002). There is no requirement under Rule 24(b) that “the intervenor [] have a direct
14 personal or pecuniary interest in the subject of the litigation,” SEC v. U.S. Realty & Improvement
15 Co., 310 U.S. 434, 459 (1940), nor does the rule mandate that the potential intervenor “be a person
16 [or entity] who would have been a proper party at the beginning of the suit.” Kootenai, 313 F.3d at
17 1107 (citing Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357–63 (2d ed. 1986)).
18 Instead, permissive intervention requires only that (1) an independent ground for jurisdiction exist,
19 (2) that the motion to intervene be timely, and (3) that there exist a claim or defense shared between
20 the main and the intervenor's suit. See, e.g., id. (“[A]ll that is necessary for permissive intervention
21 [under Rule 24(b)] is that intervenor's ‘claim or defense and the main action have a question of law
22 or fact in common.’”) (quoting Fed. R. Civ. P. 24(b)); United States v. Washington, 86 F.3d 1499,
23 1506–07 (9th Cir. 1996) (following a tripartite test). Even if these three requirements are met, the
24 court still retains “broad discretion” to deny a motion for permissive intervention. Donnelly v.
25 Glickman, 159 F.3d 405, 412 (9th Cir. 1998). In particular, “[i]n exercising its discretion the court
26
27
28

1 shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights
2 of the original parties.” Fed. R. Civ. P 24(b).

3
4 DISCUSSION

5 I. Defendants’ Motions to Dismiss

6 Defendants’ motions to dismiss are premised on the theory that plaintiffs have accused them
7 only of what might be considered “aiding and abetting” Napster’s copyright violations, viz.,
8 providing Napster with additional funding that allowed it to continue operating. See, e.g., Def.
9 Bertelsmann Mot., at 1. According to defendants, plaintiffs thus state claims for what this court has
10 termed “tertiary infringement”—vicarious or contributory assistance to a vicarious or contributory
11 infringer, here Napster—and towards which this court has previously expressed disfavor. See Katz
12 v. Napster, C 00-4725 MHP, Mem. & Order (N.D.C.A. 2001) (Patel, C.J.).

13
14 Defendants have not properly characterized plaintiffs’ complaints. Rather than alleging that
15 defendants merely supplied Napster with necessary funding (serving as a “but for” cause of
16 Napster’s subsequent activities)—or accusing defendants of contributory and vicarious infringement
17 in purely conclusory fashion—plaintiffs have specifically accused defendants of assuming control
18 over Napster’s operations and directing the infringing activities that gave rise to the original Napster
19 litigation. Plaintiff Lieber’s complaint is exemplary:

20 41. As Napster’s only available source of funding, Bertelsmann held significant power and
21 control over Napster’s operations. But Bertelsmann chose not to exercise its position to stop
22 the rampant infringement by requiring that Napster immediately discontinue its infringing
23 service until such time as it could operate lawfully. Rather, pursuing its strategy to build a
24 digital media empire around the Napster brand, Bertelsmann convened a secret “task force”
25 of company executives to consider how best to protect Bertelsmann’s investment in the
26 Napster service. After deliberating whether to shut the Napster service until it could be
27 operated in a non-infringing manner, Bertelsmann’s “task force” determined that, in order to
28 realize Bertelsmann’s objective to make Napster its internet distribution network, it was
necessary to keep the *infringing* Napster service in operation to preserve the Napster
customer base.

42. Senior Bertelsmann management endorsed the decision of its “task force” to keep the
infringing Napster service operating, and directed Napster to proceed accordingly.

1 Lieber Compl. ¶¶ 41-42 (emphasis in original). UMG's complaint contains similar statements:

2 25. ... By at least October 2000, the Napster system was firmly under the control of
3 Bertelsmann. Bertelsmann continued to operate the Napster system and to allow its users to
4 copy millions of protected recordings, despite the District Court's finding that this activity
5 was unlawful.

6 26. In February 2001, the Ninth Circuit affirmed the District Court's ruling that plaintiffs
7 were entitled to a preliminary injunction and remanded the case for certain modifications to
8 the injunction's terms. *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001).
9 Bertelsmann nevertheless chose to keep its Napster system open for business.

10 27. On March 5, 2001, the District Court in the Napster Litigation modified the preliminary
11 injunction in accordance with the Ninth Circuit's instructions. Bertelsmann still kept Napster
12 online, and the users of the Napster system continued to copy Plaintiff's protected works
13 unlawfully.

14 UMG Compl ¶ 25-27. Capitol Records's complaint alleges essentially identical facts:

15 At least as early as September 2000, Bertelsmann began preparing to operate the Napster
16 system, and by at least as early as October 2000, the Napster system was firmly under the
17 control of Bertelsmann. Bertelsmann continued to operate the Napster system and to allow
18 its users to copy millions of protected recordings, despite the District Court's finding that this
19 activity was unlawful. Bertelsmann could have stopped the ongoing infringement, including
20 by shutting Napster down, withholding money from the unlawful business activities, and/or
21 requiring Napster to exercise its power to block the accounts of users engaged in piracy, but
22 Bertelsmann intentionally did none of these things.

23 Capitol Records Compl. ¶ 37.

24 UMG's complaint against Hummer Winblad, while not a replica of the complaints against
25 Bertelsmann, rests upon functionally similar claims:

26 34. On July 26, 2000, the District Court in the Napster Litigation granted the plaintiffs'
27 motion for a preliminary injunction. *A & M Records, Inc. v. Napster, Inc.*, 114 F. Supp. 2d
28 896 (N.D.C.A. 2000). The United States Court of Appeals for the Ninth Circuit stayed the
preliminary injunction pending appeal. Napster, *by now firmly under the control of the*
Defendants, continued to operate and to allow its users to copy millions of protected
recordings despite the District Court's finding that this activity was unlawful.

...

38. By the time it was shut down, the Napster system had aided, facilitated, and enabled
billions of separate acts of infringement. The overwhelming majority of sound recordings
that were available on Napster during the almost two years it was operative (*including the*
period of time that Hummer Winblad controlled the Napster system) were copied and
distributed in violation of the Copyright Act and other laws. Napster had full knowledge of
this fact when it launched its service. Hummer Winblad had full knowledge of this fact, and

1 all of the facts averred herein, when it made its decision to acquire and control Napster, and
2 during its operation of Napster.

3 UMG Compl. against Hummer Winblad ¶¶ 34 & 38 (emphasis added).

4 Plaintiffs' allegations that defendants exercised essentially full operational control over
5 Napster during periods in which Napster remained a conduit for infringing activity may be wholly
6 unfounded; indeed, they may be mutually exclusive, as plaintiffs variously claim that both Hummer
7 Winblad and Bertelsmann were managing the same corporate enterprise at approximately the same
8 time. Regardless, such questions must be left for resolution upon motions for summary judgment or
9 at trial, as this court is obligated—in the context of a Rule 12(b)(6) motion to dismiss—to accept the
10 facts and allegations plead in plaintiffs' complaints as true. Cahill, 80 F.3d at 337–38.

11 For the purposes of this motion, plaintiffs have thus stated a claim that Bertelsmann and
12 Hummer Winblad—as entities exercising full control over Napster's operations—were directly
13 responsible for the infringing activity perpetrated by Napster's online users; more than merely
14 *knowing of* and *contributing to* the infringing activity, they are alleged to have specifically *ordered*
15 that such activity take place. Cf. Napster II, 239 F.3d 1004. Under well-established Ninth Circuit
16 law, such allegations state a viable claim for relief under theories of both contributory and vicarious
17 liability. See Gershwin, 443 F.2d at 1162 (liability for contributory infringement requires substantial
18 participation in an act of direct infringement); Fonovisa, 76 F.3d at 262 (holding that a vicarious
19 infringer is one who “has the right and ability to supervise the infringing activity and also has a direct
20 financial interest in such activities”). By consequence, at this stage the court need not pass upon the
21 question of whether mere financial support of a contributing and vicarious infringer such as
22 Napster—without more direct involvement—would give rise to a claim for contributory or vicarious
23 infringement against the party providing the funding. Plaintiffs' far more extensive allegations
24 suffice to defeat defendants' motions to dismiss.

1 II. Bridgeport's Motion to Intervene

2 Applicant Bridgeport (hereinafter "applicant") has asserted no claim to a right of intervention
3 under Rule 24(a), relying instead upon Rule 24(b) and the argument that its own claims against
4 Hummer will involve many of the same issues of law and fact implicated in UMG's lawsuit. For
5 their part, plaintiff UMG and defendant Hummer, both of whom oppose applicant's attempt to
6 intervene, do not dispute that applicant fulfills the Ninth Circuit's three requirements for
7 intervention: an independent ground for jurisdiction, timely filing of the motion to intervene, and a
8 claim or defense shared between the main and the intervenor's suit. See Kootenai, 313 F.3d at 1107.
9 Rather, plaintiff and defendant assert that applicant's inclusion in this litigation will introduce
10 numerous additional issues of law and fact—some of which would pit putative co-plaintiffs UMG
11 and Bridgeport against one another—and thus prejudice the interests of the original parties to this
12 action.

13 Allowing Bridgeport to intervene in UMG's suit against Hummer Winblad would
14 undoubtedly further the interests of judicial economy in at least some respects. Bridgeport's
15 complaint in intervention for contributory and vicarious infringement against Hummer incorporates
16 many of the same allegations of Hummer's effective control over Napster and its operations that
17 undergird UMG's complaint. See, e.g., Bridgeport Compl. ¶ 28 ("Hummer Winblad assumed
18 control of Napster subsequent to the commencement of the Napster Litigation, and with full
19 knowledge that it was alleged that Napster was liable for unprecedented, massive contributory and
20 vicarious copyright infringement."). Bridgeport's suit against Hummer will thus necessarily involve
21 many of the same questions of law and fact raised by UMG's own claims, and wholesale
22 consideration of these questions in one single lawsuit would save time and judicial resources. This
23 promotion of judicial economy is "a relevant consideration in deciding a motion for permissive
24 intervention." Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1988).

25 Yet inclusion of Bridgeport in UMG's litigation will also necessitate the consideration of
26 extraneous legal and factual issues that UMG's lawsuit would not otherwise invoke. As Hummer
27 itself notes, applicant was not a party to the original Napster litigation, and consequently that
28

1 litigation cannot serve as the means by which Bridgeport provided Napster with notice that
2 Bridgeport's copyrighted works were being shared by users of the Napster system. See Napster II,
3 239 F.3d at 1027. In order to prove its case, Bridgeport will be forced to establish this separate
4 notice element (giving rise to Napster's "duty to disable access to the offending content") as an aside
5 to the general thrust of UMG's case. Id. Bridgeport's complaint will also introduce a multitude of
6 new recordings into the action, forcing the parties to litigate the liability and damages (if the case
7 reaches that stage) stemming from the putative sharing of many files that bore no relation to UMG's
8 original lawsuit. These elements mitigate the advantages in judicial economy that might otherwise
9 be realized and threaten to delay the resolution of plaintiff's case, issues this court is duty-bound to
10 take into account when evaluating Bridgeport's application for intervention. See Donnelly, 159 F.3d
11 at 412 ("[A] district court must consider whether intervention will unduly delay the main action....").

12 Moreover, Bridgeport's intervention in UMG's action threatens to prejudice plaintiff by
13 forcing it to defend against collateral actions relating to ownership of the songs whose copyrights
14 UMG claims were infringed. Bridgeport's complaint in intervention lists a plethora of UMG-owned
15 recordings that it claims "sample" portions of compositions owned by Bridgeport. See Bridgeport
16 Compl. ¶ 2 & Exh. A. Needless to say, UMG disputes Bridgeport's ownership claims. See Pl. Opp.
17 to Mot., at 6. It is reasonable to expect that litigation regarding Hummer Winblad's liability for
18 vicarious or contributory infringement of these recordings would thus be accompanied by parallel
19 claims brought by Bridgeport against UMG, seeking to establish rights to the putative damages
20 UMG might obtain from Hummer for infringing those recordings.⁴

21 When deciding a motion to intervene, a district court must take into consideration the
22 prejudice to the original parties that will result if the applicant in intervention is permitted to join the
23 action. See Donnelly, 159 F.3d at 412. Indeed, according to one commentator, the possibility of
24 prejudice to the original parties is in fact the "principal consideration" when deciding a motion to
25 intervene. 7C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1913 (2nd
26 ed. 2003). UMG is very likely to suffer prejudice to its efforts to collect from Hummer Winblad if it
27 is forced—within the same action—to defend itself against charges that it must in turn pay royalties
28

1 or damages to Bridgeport for the “sampling” of Bridgeport’s music in its songs. Such allegations
2 would divert time and resources from the principal thrust of UMG’s lawsuit and entangle the legal
3 and factual issues involved therein within a web that is not of the original parties’ making.
4 Moreover, it is far from clear that UMG and Bridgeport’s interests will always align—co-plaintiffs
5 who find themselves in roles of adversity regarding several crucial (and potentially very financially
6 significant) issues are unlikely to be able to propel this litigation forward in an effective matter. The
7 court finds that UMG will incur significant prejudice if Bridgeport is allowed to intervene in its
8 action against Hummer Winblad.


9 Finally, it is worth noting that Bridgeport retains the option of bringing a separate action
10 against Hummer Winblad (just as it has brought a separate case against Bertelsmann), or even of
11 litigating against UMG. While hardly dispositive, Bridgeport’s ability to pursue its claims through
12 an alternative mechanism without any prejudice to its own rights is significant in the context of a
13 motion to intervene brought by that party. See 7C Charles Alan Wright & Arthur R. Miller, Federal
14 Practice and Procedure § 1913 (2nd ed. 2003) (existence of another adequate remedy to protect
15 applicant’s rights is relevant to court’s determination regarding whether to grant leave to intervene).
16 Moreover, if Bridgeport were to bring a separate action against Hummer Winblad, that case would
17 likely be consolidated in this court alongside the other Napster-related litigation, just as Bridgeport’s
18 litigation against Bertelsmann has already been consolidated here. The parties—and the court—will
19 thus likely realize the same gains in efficiency and judicial economy that might have been obtained
20 through Bridgeport’s intervention without placing UMG in the uncomfortable position of litigating
21 alongside a party whose interests might oppose its own in substantial respect. The uncommon
22 circumstances of this case thus favor denial of Bridgeport’s motion to intervene.
23
24
25
26
27
28

1 CONCLUSION

2 For the foregoing reasons, defendants' motions to dismiss are DENIED. Applicant's motion
3 to intervene is DENIED.

4 IT IS SO ORDERED.

5 Dated:  July 13, 2004


MARYLYN HALL PATEL
Chief Judge
United States District Court
Northern District of California

ENDNOTES

1
2
3 1. Hummer Winblad has been sued only by UMG, while all three plaintiffs have filed suit against Bertelsmann.

4 2. All facts have been gleaned from the parties' moving papers, unless otherwise noted. For the
5 purposes of this motion to dismiss, all material allegations in the parties' complaints are to be taken
6 as true and construed in the light most favorable to the plaintiff. NL Industries, Inc. v. Kaplan, 792
F.2d 896, 898 (9th Cir. 1986).

7 3. No motions related to this action are currently pending before this court.

8 4. The parties expend a great deal of time and energy discussing Bridgeport's behavior in several
9 other litigations, including one instance in which it found itself adverse towards UMG. Because
10 there exists a sufficient basis otherwise within the record to decide Bridgeport's motion to intervene,
11 the court need not address what impact Bridgeport's prior acts might have upon the determination of
prejudice that UMG would incur from Bridgeport's introduction into this action.